



MINUTES OF THE LAND RECLAMATION COMMISSION MEETING

September 25, 2003

Vice Chairman Jim DiPardo called the meeting to order at 10:05 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

Commissioners Present: Jim DiPardo; Hugh Jenkins; Mimi Garstang; Jim Hull; Gerald Ross; and Dr. Carol Wicks.

Staff Present: Larry Coen; Tom Cabanas; Clint Bishop; Richard Hall; Mike Larsen; Bill Zeaman; Larry Hopkins; Tim Thorn; Richard O'Dell; Rexroy Scott; Andy Reed; Teri Walker; and Shirley Grantham.

Others Present: Amy Randles, Attorney General's Office; John W. Coleman and Ervin Barchenger, Office of Surface Mining; James Rolls and Dan Upp, Associated Electric Coop., Inc.; Tom Gredell, Gredell Engineering; Brett Geger, APAC; Daniel R. Schuette, Deputy Director, Air and Land Protection Division, Missouri Department of Natural Resources; Denise Evans, Office of the Director-OAC, Missouri Department of Natural Resources; Edward J. Twehous, Twehous Excavating Co., Inc.; Jack Atterberry, Associated General Contractors of Missouri, Inc.; Mike Alesandroni, St. Louis RCGA; Mitch Moore, John Uhlmann, and Kevin Thomas, Team Excavating LLC of Kansas City, Missouri.

1. MINUTES OF THE JULY 24 and AUGUST 12, 2003, MEETINGS

Dr. Wicks made the motion to approve the Minutes as written. Mr. Hull seconded; motion carried unanimously.

2. ABANDONED MINE LAND ACTIVITIES

AML Status Report (Attachment 1). Mr. Cabanas presented this report to the Commission.

Bond Forfeiture Reclamation Projects and Use of the Coal Mine Land Reclamation Fund (Attachment 2). Mr. Cabanas stated a system needs to be established by which to determine how much funding to allocate to each reclamation project from the Coal Mine Land Reclamation Fund (CMLRF). This fund was developed by statute, and the purpose is to supplement the regular per acre bonding requirement in the event of a permit revocation. Monies in the fund are accumulated by each coal operator paying an assessment based upon the tonnage of coal produced per calendar year. While the

assessment procedure is listed in the law, the use of the monies from this fund is not. Mr. Cabanas stated that, in the past, the staff has assumed that the monies could be used as needed in order to complete reclamation work in a manner as prescribed by the performance standards found in the rules. However, this assumption is being challenged recently due to the large number of permit revocations during the past seven years and the decreasing number of coal operators paying into the fund. Mr. Cabanas stated that, currently, there are only two active coal mines paying into the CMLRF. Based on a reclamation cost assessment conducted in 1996 on Missouri Mining and Universal Coal & Energy, the estimated costs of reclaiming permanent program permit areas and subtracting out the amount of bond funds collected from the surety companies for these permits would leave a deficit to reclaim the remaining B-Pool sites. This deficit might be covered by the annual assessment if funding is restored to the coal regulatory program. However, this narrow margin points to the need to carefully plan out how these monies are spent. In addition, a bill was passed during the 2003 legislative session that removed the earned interest from the CMLRF that was accumulated over the past two years.

Mr. Cabanas stated that, in order to provide the best possible funding process for the reclamation projects that are under permit revocation, the staff has decided to appropriate the remaining funds to each permanent program permit area based upon the number of acres that were affected. Attachment 2 shows how these funds will be divided between the various permit areas. The monies collected from the forfeiture of bonds and the allocated monies from the CMLRF will be expended on the permit area with a certain amount of allocated funds set aside for a maintenance period. The staff will recommend release of liability to the Commission once the project, as designed, has become sufficiently stable with regard to vegetative cover and erosion control. This will result in no further reclamation work being performed on the area, regardless of whether all performance standards have been met.

Mr. Cabanas noted there are two sub-categories of the CMLRF—the A-Pool and the B-Pool. The reason for the division of the CMLRF is that the law required that 40 percent of all funds assessed be used to reclaim permits that have been revoked as of September 1, 1988; this is referred to as the A-Pool. The remaining 60 percent of the assessed fund monies were to be used to reclaim permits revoked after September 1, 1988; this is referred to as the B-Pool. Once all A-Pool permits are reclaimed, all of the CMLRF monies collected will be allocated to the B-Pool.

The Office of Surface Mining has recently completed an assessment of the actual liability at the various forfeiture sites. A table of this assessment was provided during the meeting. This table shows that the intent of the law could be more completely fulfilled if Coal Mine Land Reclamation Funds (CMLRF) are assigned to each site based on remaining liability rather than remaining acres. The basic intent of the presentation,

however, remains the same. The staff requests that the Commission approve the concept of allocating funds from the CMLRF to the forfeiture sites in a reasonable fashion so that monies are not exhausted before all the sites are addressed.

The Commission concurred with the staff's recommendation.

AML Brochure. Mr. Cabanas noted that the Commission had been provided with a draft copy of a brochure entitled "The Role of the Abandoned Mine Land Unit."

Ms. Randles stated she wanted to make a few changes to the brochure and that those be made before distribution to the general public.

3. COAL BOND FORFEITURE

L. B. Mines, Liability Release (Attachment 3). Mr. Hall stated that the Land Reclamation Commission approved a permit for 60 acres for L. B. Mines in 1979. Records indicate the company ceased its last grading work in April 1980 and the last vegetation work in the fall of 1981. Of the 60 acres permitted, 33 acres were released as unaffected, resulting in 27 acres remaining bonded. Of this, 50 percent of the bond was released on 15 acres on which grading had been completed. Of the 27 acres remaining under liability, 8 acres were unaffected; 10 acres were used for roads, soil stockpiles, and a pond; and 9 acres constituted the coal removal area.

Mr. Hall stated that, in March 1982, the Program was notified that no further reclamation operations would be conducted by the company. In September 1982, following the filing of a Formal Complaint by the Staff Director to revoke the permit and to forfeit the bond, the Commission entered an order revoking Permit 79-55 and declaring the reclamation bond forfeited. The Commission further authorized the Missouri Attorney General to take "all appropriate action as soon as feasible to collect on the surety bond which ultimately led to a settlement with the bonding company and collection of the bond. State sponsored reclamation of the site took place during the summer of 2001.

Mr. Hall stated that in August 2003, the staff conducted an inspection of the L. B. Mines mine site. It was noted that grading had been completed on the area and that erosion was being controlled in the major drainageways. Rock was placed in some locations to control erosion or cover bare areas. One sediment pond had been removed, and one farm pond used for sediment control was left as permanent. The overall quality of the vegetation at the site ranged from good to poor. The 4-wire fence, running north to south along the west side of the reclaimed area, was not stable in all locations. The site has had acid water issues in the past. During the inspection, seepage was observed in the lower,

southwest corner of the area, but may not have been originating from the mine disturbance area but from unaffected sandstone outcroppings. Mr. Hall stated the pH of the water was found to be between 6.5 and 7.0, which is very acceptable.

Mr. Hall stated that all forfeited bond monies, plus accumulated interest have been expended by the State in the process of performing reclamation at the L. B. Mines mine site. While not meeting all of the applicable Interim Law performance standards, no additional funds are available for further reclamation activities at this site. Mr. Hall stated the forfeiture activities contracted by the State to date have resulted in leaving the site in a stable and usable condition. None of the existing conditions at the site constitute a significant threat to the environment or to human health and safety. Therefore, the staff recommends that the Commission release the State from all further reclamation liability associated with this abandoned mine site. This recommendation is based solely on the lack of funds to perform additional reclamation activities at the site. The two parties who own the property containing the mine site were notified of the staff's recommendation. No comments or objections were received from them. Neither of the parties was present.

Dr. Wicks made the motion that the Commission accept the staff's recommendation regarding the liability release for L. B. Mines. Jim Hull seconded; motion carried unanimously.

4. INDUSTRIAL MINERALS

Enforcement

Settlement Agreement, Capital Quarries, Inc. (Attachment 4). Mr. Larsen stated that following an on-site inspection of the company's Rolla Quarry site in Phelps County in April 2003, a Notice of Violation was issued to the company for affecting land outside the permit area and lack of sediment controls on that area. Following receipt of the Notice and assessment, the operator requested an informal review by the Staff Director. The informal conference was held on June 9, 2003. Following the informal conference, the Staff Director offered a Settlement Agreement to the company wherein the Notice of Violation was affirmed and the penalty assessment was reduced from \$460.00 to \$310.00. The company accepted the terms of the Settlement Agreement. Therefore, the staff recommends the Commission approve the Settlement Agreement. If approved, an order will be sent to the company for payment of the administrative penalty as outlined in the Settlement Agreement.

Mr. Hull made the motion that the Commission approve the Settlement Agreement as presented for Capital Quarries, Inc. Mr. Ross seconded; motion carried unanimously.

Bond Releases:

Summary of Industrial Minerals Bonds Released by Staff Director (Attachment 5).

Mr. O'Dell presented this report to the Commission. He stated the Staff Director has reviewed, evaluated, and approved several Industrial Minerals bond release requests since the July 2003 Commission meeting which are as follows:

Base Rock Materials: 20 acres of Cropland at #2-A & A Plant, total release amount of \$8,500.00.

Deer Run Landowners Association: 1 acre wildlife at Site #1, total release amount of \$500.00.

Martin Marietta Materials: 40 acres of pasture at the Greenwood Quarry; 12 acres of pasture, 18 acres of industrial, and 15 acres of wildlife at the Peculiar Quarry; 5 acres of pasture and 12 acres of undisturbed at the Mercer Quarry; 3 acres of pasture, 2 acres of industrial, 11 acres of wildlife, and 15 acres of undisturbed at the Princeton Quarry; 13 acres of industrial and 25 acres of wildlife at the North Gallatin Quarry; 8 acres of pasture at the Barnard Quarry; and 6 acres of undisturbed at the Breit Quarry for a total release amount of \$92,500.00.

Hunt Midwest Mining: 20 acres of undisturbed at the Creighton Quarry, total release amount of \$10,000.00.

5. OTHER BUSINESS

Commission Review of Existing Policy Concerning Mining vs. Development

(Attachment 6). Mr. Coen stated the Program has recently been faced with specific site issues where commercial site development resulted in the sale of excess rock material in order to make way for building construction. The Program staff is seeking guidance from the Commission to know the appropriate way to respond to these situations in the future. For example: during the spring, a mining company, as a subcontractor, was excavating rock for a commercial condominium developer at the Lake of the Ozarks area. The footprint of the construction site had no room for the stockpiling of excess rock, and the steep hillside required the excavation of significant rock in order to facilitate the condominium foundations and parking areas. Thus, the mining company sold the excess material without a mining permit for this site, although the company holds a number of permitted sites where rock excavation and sales are the primary business.

Mr. Coen noted in another instance, a commercial developer was removing rock from property near Kansas City in order to flatten a piece of ground for a building

development. Mr. Coen stated the developer is not a mining company and did not know that they needed a mining permit to extract and sell rock from the site. Once they were made aware of this requirement, the developer ceased the sale of rock and agreed to apply for a mining permit.

Mr. Coen stated that both of the above scenarios play out under the current Commission policy on mining vs. development passed by the Commission in March 1995. Yet, neither of these situations was easily resolved for either the industry or the Program. Mr. Coen stated the Program has learned that there are many sites under commercial development throughout Missouri where excess rock is sold because storage of the rock on-site is not practical. However, it does not seem that the intent of the Land Reclamation Act encompasses sites for the development of commercial buildings as mine sites. Therefore, the Program suggests the Commission listen to open discussion today, with a goal toward a Commission review of the existing policy within the next two regular meetings.

The Associated General Contractors of Missouri, Inc. (AGC), provided the Commission with a draft of their suggested changes to the “mining vs. development policy” for the Commission’s review per Attachment 6. The AGC proposes to define “surface mining of minerals” as those activities which meet the definition of commercial surface mining in Section 444.765, RSMo, and do not involve excavation and removal of minerals for the primary purpose of preparing the site of excavation for building of any structure or facility. Such activities require a surface mining permit. The proposed definition of “land disturbance or excavation” would be any operation in which minerals or fill dirt in or on the ground is moved, removed, or otherwise displaced by means of any tools, equipment or explosives for the primary purpose of preparing the site of excavation for building of any structure or facility. Such operations and activities do not require a surface mining permit.

Representatives from several contractors—Twehous Excavating, Team Excavating Co.,-- as well as from APAC-Missouri, a mining company, expressed support of the proposed changes by Associated General Contractors. Written comments were also provided to the Commission from the Missouri Limestone Producers Association per Attachment 6.

The Commission concurred that staff continue to formulate policy and possibly regulations regarding “mining vs. development.”

Presentation of Resolutions. Resolutions were presented to Tim Thorn and Dr. Carol Wicks, Commissioner, for their commitment and dedication to the protection of the environment and a job well done on behalf of the Land Reclamation Commission and the people of the State of Missouri.

Closed Session. Mr. Jenkins made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on November 19, 2003, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Ms. Garstang seconded; motion carried unanimously.

Adjournment. The meeting was adjourned at 11:48 a.m.

Respectfully submitted,

Chairman